1032.

SUPREME COURT OF THE UNITED STATES.

No. 165.

JAMES RHODES, COMPLAINANT AND APPELLANT,

vs.

WILLIAM B. FARMER, WILLIAM FELLOWS, AND CORNELIUS FELLOWS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

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Exemplification.

JAMES RHODES
vs.
W. and C. FELLOWS, and WILLIAM B. FARMER.

Pleas had at a District Court of the United States for the Northern District of Mississippi in Chancery sitting, begun and held at the town of Pontotoc, in said district, on the first Monday of June, A. D. 1851. Present, the Hon. Samuel J. Gholson, Judge of said court.

Be it remembered that on the 5th day of June, A. D. 1851, that James Rhodes, a citizen of the State of Alabama, filed in the office of the clerk of said court his certain bill of injunction, in the words and figures following, to wit:—

(*Original Bill.*)

UNITED STATES OF AMERICA: District Court of the United States for the Northern District of Mississippi, in Chancery, at June Term, 1851.

To the Hon. Samuel J. Gholson, Judge of said District Court, presiding in Chancery.

James Rhodes, a citizen of the State of Alabama, brings this his bill of complaint against William B. Farmer, a citizen of the county of Carroll, in said Northern District of Mississippi, and William Fellows and Cornelius Fellows, of the State of Kentucky, defendants.

And thereupon your orator complains and says that, at the June Term, 1850, of said District Court, on the law side of the docket, he recovered a judgment against William B. G. Sneed, Council R. Wright, James E. Farmer, and the said defendant William B. Farmer, who then resided in the said county of Carroll, for the sum of thirteen hundred and eight $\frac{62}{100}$ dollars upon the said judgment; an execution issued to the Marshal of said Northern District, returnable to the December Term 1850 of said District Court, upon which writ the Marshal returned "No property found." And your orator does not know of any visible effects belonging to either of said defendants to the said suit at law, liable to be levied on and sold by execution within the jurisdiction of this court.

Your orator would further show unto your Honor that at the present term of this court an issue at law in said District Court was tried between Mary A. S. Strong, claimant of fifteen negroes, or thereabouts, levied on as the property of James M. Strong, her husband, at the instance of W. and C. Fellows, by virtue of an execution which issued on a judgment in their behalf against said

James M. Strong and others, by the names and style of McEwen, King & Co., on the 14th day of June, 1843, in said District Court, for the sum of $3,937 75, or thereabouts, besides costs; and that upon the trial of the issue between the parties, the jury rendered a verdict in favor of the plaintiffs in execution, upon which finding of the jury the judgment of this court was given, thereby subjecting the property so levied on as the property of said James M. Strong, the defendant in execution as aforesaid.

And your orator would further represent and show unto your Honor that during the trial of the issue at law made up and tried at the present term of this court between the said Mary A. S. Strong and the said W. and C. Fellows, it appeared in proof that the said William B. Farmer was the owner of said judgment against said James M. Strong and others; and complainant avers that there is a copy of an assignment filed in this court by which the balance due on said judgment against said James M. Strong and others has been transferred by W. and C. Fellows to William B. Farmer.

Your orator would further show unto your Honor, that at the December Term 1850 of the said District Court, he recovered another judgment against the said William B. Farmer and others for the sum of $3,179 19, besides costs of suit, and that execution issued thereon, and has also been returned by the Marshal of said district "No property found."

Your orator represents unto your Honor, that his said judgment at law against said William B. Farmer and others, remains in full force and effect in said court, and that they now operate as a lien in equity upon the interest and claim of said William B. Farmer on the said judgment of W. and C. Fellows against said James M. Strong and others, sold, transferred or bargained by said W. and C. Fellows to said William B. Farmer.

Your orator is informed and believes that he cannot, by process of law, reach the interest of said William B. Farmer, whatever it may be in the property made liable as the property of James M. Strong to the satisfaction of said judgment in favor of W. and C. Fellows, or for his part of the money due upon said judgment should said Strong elect to pay the money instead of surrendering the negroes in satisfaction of the judgment, and that he is remediless at law. Your orator therefore prays your Honor that the said W. and C. Fellows, and the said William B. Farmer, be made parties defendants to this bill, and that they answer the same truly according to the best of their knowledge, information and belief, and particularly the following special interrogatories:—

1. That defendants answer whether the said W. and C. Fellows did not sell and transfer the said balance due on said judgment in this court to said William B. Farmer, and if so, when and at what time?

2. That said defendants answer to show whether the sale of said judgment in favor of said W. and C. Fellows against the said James

M. Strong and others to William B. Farmer was in writing or by parol, and if in writing, that the same be made a part of their answer?

The premises considered, may it please your honor to enjoin the said W. and C. Fellows and their agents and attorneys, as also the Marshal of the Northern District from paying over the money, or from the delivery of the negroes so made subject to the satisfaction of said judgment at law, as might rightfully be claimed by said William B. Farmer, as assignee of said W. and C. Fellows; but that the money or the property, as the case may be, shall be held by them or by the marshal subject to the lien of your orator's judgment at law against said Farmer and others. And your orator prays that subpœna in chancery and writs of injunction issue against said W. and C. Fellows, and William B. Farmer, and their agents and attorneys, and against said James M. Strong and wife, Mary A. S. Strong, commanding, &c., and restraining them from any acts and deeds that may prejudice the claim of your orator to those assets belonging to said William B. Farmer as assignee of said judgment. And may it please your honor to grant such other process, from time to time, as may appear necessary and proper in the premises, and your orator prays such general relief as his case may demand, &c.

EVANS & TOPP,
Complainant's Solicitors.

UNITED STATES DISTRICT COURT,
For the Northern District of the State of Mississippi, June Term, 1851.

(*Affidavit to Bill.*)

John S. Topp personally appeared in open court, and made oath in due form of law that the facts stated in the foregoing bill are true to the best of his knowledge, information, and belief.

JOHN S. TOPP.

(*Acknowledgment of Notice for Injunction.*)

The defendants, W. and C. Fellows and William B. Farmer, acknowledged service of the application for injunction in the words and figures following, to wit:—

We acknowledge that we have received notice that an application will be made, to the District Court of the United States for the Northern District of Mississippi, at Pontotoc, by the complainant in this case for an injunction as within prayed for on the fifth day of June, 1851.

BARTON & STEARNS,
Att'ys for W. and C. Fellows and Wm. B. Farmer.

June 4, 1851.

And afterwards, to wit: on the fifth day of June, 1851, it being

a day of the term of said court, the following proceedings were had, to wit:—

Thursday, June 5, A. D. 1851.

JAMES RHODES
vs.
WILLIAM FELLOWS, *et al.*

(*Order of Court for Injunction and Subpœna.*)

This day came the complainant, by his solicitors, and filed his bill in this cause; and it appearing to the court that the attorneys of accord in this court of the defendants have had notice of the application for an injunction in this cause, it was therefore ordered by the court, upon opening the matters of the bill, that upon the complainant giving bond, in the penalty of one thousand dollars, with John S. Topp as security, payable to defendants, Fellows and Farmer, conditioned according to law, an injunction and subpœna issue as prayed for by the complainant.

The complainant filed his bond for injunction in the words and figures following, to wit:—

(*Injunction Bond.*)

Know all men by these presents that we, James Rhodes and John S. Topp, are held and firmly bound unto William Fellows and Cornelius Fellows and William B. Farmer, their heirs, executors, administrators, or assigns, in the penal sum of one thousand dollars, for the payment of which well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this fifth day of June, A. D. 1851.

The condition of the above obligation is such that whereas, heretofore, to wit: on the fourteenth day of June, 1843, the said William and Cornelius Fellows recovered a judgment against McEwen, King & Co., of which company James M. Strong was one of the defendants in the District Court of the United States for the Northern District of Mississippi, at Pontotoc, for the sum of three thousand nine hundred and thirty-seven dollars and seventy-five cents. And whereas, also, an execution, which from said District Court was levied on fifteen negroes as the property of James M. Strong, was claimed by his wife, Mary A. S. Strong, as her property, and she entered into bond and security to try the right of property, and therefore an issue was made up between the said William and Cornelius Fellows and the said Mary A. S. Strong. And the said issue having been tried and determined in said District Court, by which the property levied on has been subjected and held liable to the satisfaction of the said judgment against McEwen, King & Co. But in the mean time, it is alleged by the said James Rhodes that the said William and Cornelius Fellows have transferred and sold the said judgment in their favor against

McEwen, King & Co. to the said William B. Farmer, against whom and others the said James Rhodes has recovered two judgments in the said District Court for the aggregate amount of $4,487 81 besides interest and costs of suit. Upon which judgment in favor of said Rhodes's executors has regularly been issued, and returned "No property found." And whereas, the said James Rhodes has exhibited his bill of complaint against the said William Fellows, Cornelius Fellows, William B. Farmer, and James M. Strong and wife for the purpose of subjecting the money or the property of said James M. Strong so found liable for the judgment against him and others, now alleged to belong to said William B. Farmer, subject to the judgments which the said James Rhodes has recovered against him the said William B. Farmer and others. And the said Rhodes having prayed and obtained an injunction against said William and Cornelius Fellows, and William B. Farmer, James M. Strong and wife, and their attorneys, and the Marshal of the Northern District from appropriating the money or the property that may come to the hands of either of them until the matters in controversy shall be adjudicated and determined before the Honorable the Judge of the District Court of the United States for said Northern District on the Chancery side of the Docket; and also restraining them from any acts and deeds that may prejudice the complainants' rights in the premises. Now, therefore, if the said James Rhodes shall prosecute his said injunction bill with effect, and obtain a decree thereon against the said parties defendants, or any of them, or in case he fail therein shall well and truly pay and satisfy all such costs and damages as they the said William and Cornelius Fellows and William B. Farmer, or either of them, may sustain by reason of the said Rhodes wrongfully filing his bill and obtaining an injunction against them, then this obligation to be null and void, otherwise to remain in full force and effect.

JAMES RHODES, [SEAL.]
By his Attorney, JOHN S. TOPP.
JOHN S. TOPP, [SEAL.]

I approve of the within bond and security.

Given under my hand this 5th day of June, A. D. 1851.

S. J. GHOLSON,
Judge U. S. D. C. for Mississippi.

On the 5th day of June, 1851, the writ of injunction as prayed for issued in this cause in the words and figures following, to wit:

(*Writ of Injunction.*)

UNITED STATES OF AMERICA,
Northern District of Mississippi, ss:

The President of the United States to William Fellows, Cornelius Fellows, William B. Farmer, James M. Strong, Mary A. S. Strong, William McQuiston, Marshal, and their Counsellors, Attorneys, and Agents, greeting:—

Whereas, it hath been represented to us in our District Court for the Northern District of Mississippi in chancery sitting on the part of James Rhodes, complainant, that he has lately exhibited his bill of complaint against you, the said William Fellows, Cornelius Fellows, William B. Farmer, James M. Strong, and Mary A. S. Strong, defendants, to be relieved touching the matters in said bill contained. We, therefore, in consideration of the premises, and of the allegations in said bill contained, strictly enjoin and command you, the said Fellows, Farmer, Strong and wife, Mary A. S., and each of you under the penalty of six thousand dollars, to be levied of your goods and chattels, lands, and tenements to our use, that you absolutely refrain from conveying, transferring, or in any manner by any act or deed disposing of the rights legal or equitable that may now exist amongst you, and especially as to the fifteen negroes levied on as the property of James M. Strong, and claimed as the property of said Mary A. S. Strong, but found by trial at law to be the property of James M. Strong and subject to his debts, &c., and from any further proceeding against the said complainant touching the matters in said bill contained, until our said court shall make another order to the contrary.

Witness the Honorable Samuel J. Gholson, Judge of the District Court of the United States for the Northern District of Mississippi, at Pontotoc, the first Monday of June, A. D. 1851, and seventy-fifth year of the Independence of the United States.

Issued the 5th day of June, 1851.

R. W. EDMONDSON, *Clerk.*

Upon which the Marshal made the following return, to wit:—

(*Marshal's Return, &c.*)

William A. Rayburn is authorized to execute this writ.

Given under my hand and seal, this 7th day of June, 1851.

WM. McQUISTON, [SEAL.]
Marshal Northern District Mississippi.

June 9th, 1851. Executed on Farmer, J. M. Strong and wife.

WM. A. QUISTON,
Marshal.

By W. A. RAYBURN,
Special Deputy.

1037.

I acknowledge service of this injunction as attorney for W. & C. Fellows.

June 8th, 1851. WM. F. STEARNS.

On the 5th day of June, 1851, the writ of subpœna issued as prayed for in the words and figures following, to wit:—

UNITED STATES OF AMERICA,
Northern District of Mississippi, ss:

(*Subpœna in Chancery.*)

The President of the United States to William Fellows, Cornelius Fellows, and William B. Farmer, greeting:—

For certain causes offered before us in our District Court for the Northern District of Mississippi, sitting in Chancery, we command you, that, laying all other matters aside, and notwithstanding any excuse, you personally appear at our District Court in and for said district, sitting in chancery, to be held at the town of Pontotoc on the first Monday of July next, to answer to a bill of complaint exhibited against you by James Rhodes, complainant, in our said court; and further to do and receive what our said court shall consider in this behalf. Hereof fail not as you will answer the contrary at your peril.

Witness the Honorable Samuel J. Gholson, Judge of the District Court of the United States for the Northern District of Mississippi at Pontotoc, the first Monday of June, A. D. 1851, and of the 75th year of the Independence of the United States.

Issued the 5th day of June, 1851.

R. W. EDMONDSON, *Clerk.*

N. B.—Execute and return this subpœna by the first Monday of July next, and if the defendants fail to answer complainants' bill by the next rule day thereafter, the bill will be taken pro confesso and set for hearing ex parte.

R. W. EDMONDSON, *Clerk.*

(*Marshal's Return, &c.*)

Upon which said subpœna the Marshal made the following return, to wit:—

Wm. A Rayburn is authorized to execute this writ. Given under my hand and seal this 7th day of June, 1851.

WM. McQUISTON, [SEAL.]
Marshal Northern District of Mississippi.

June 9, 1851, executed.

WM. McQUISTON,
Marshal.

By WM. A. RAYBURN,
Special Deputy Marshal.

(*Answer and cross-bill of defendant, Wm. B. Farmer.*)

On the 11th day of October, 1851, the defendant, Wm. B. Farmer, entered his appearance in said cause, and filed his answer and cross-bill in the words and figures following, to wit:—

To the Honorable Samuel J. Gholson, Judge of the District Court of the United States for the Northern District of the State of Mississippi at Pontotoc.

The separate answer of Wm. B. Farmer to a bill of complaint exhibited against him and others in said court on the chancery side thereof, by James Rhodes.

This respondent, saving and reserving the benefit of all exceptions to the said bill for its manifold errors, informalities, and uncertainties, for answer thereto, or to so much and such parts thereof as he is advised, it is material for him to answer unto, saith: That he admits it to be true, that, at the June Term, 1850, of said court, the complainant recovered a judgment on the law side of said court, against Wm. B. G. Sneed, Council R. Wright, James E. Farmer, and this respondent, for the sum of $\$1{,}308\frac{62}{100}$, and that an execution issued upon said judgment, and came to the hands of the Marshal of the Northern District of Mississippi, and was by him returned "no property found;" and that none of the defendants named aforesaid have any property within the jurisdiction of said court upon which a levy could be made to satisfy said judgment. He also admits the existence of the second judgment charged by complainant, and that an execution thereon has been returned "*nulla bona.*"

Respondent further admits that, at the June Term, 1851, of said court, an issue was tried between Mary A. S. Strong, claimant of fifteen negro slaves as the property of James M. Strong, levied on by virtue of an execution issued from said court, in favor of W. and C. Fellows, against the said James M. Strong and others, and the said W. and C. Fellows plaintiffs in the execution, and that the said issue was decided in favor of the said plaintiffs in the execution; whereby the said slaves were found and adjudged to be subject to the satisfaction of the said execution. The judgment upon which the said execution was issued was rendered on the 4th day of June, 1843, for the sum of $\$3{,}937\frac{75}{100}$, and is entitled to some credits, the precise amount of which is unknown to respondent, but supposed to be about $763. The value of the said slaves, however, that were recovered, in the said trial of the right of property, exceeds the amount now due upon the said judgment.

Respondent denies that the said judgment in favor of W. and C. Fellows *vs.* James M. Strong and others, was ever sold to him by the said W. and C. Fellows, and states the fact to be, that, on or about the 5th day of February, 1848, he owed, or was sued for a large debt which he supposed to belong to the said James M. Strong, and respondent wishing to procure a set-off to said claim against him applied to the said W. and C. Fellows to obtain the control of

said judgment, offering to pay them three-fourths of the amount that he might be able to collect upon the same, which offer was accepted by them, and the said judgment was accordingly transferred to him, not as a sale thereof but to enable respondent to use the same as a set-off; and respondent, in order to secure the said W. and C. Fellows, their three-fourths of the amount of said judgment in the event that he should be able to use the same as contemplated, executed to them a penal bond a copy whereof is herewith filed, marked Exhibit I, and prayed to be taken as a part of this answer, the original not being in the custody or under the control of this respondent.

Respondent states, therefore, that under his contract with the said W. and C. Fellows, he is entitled to a fourth part of the money that may be collected upon said judgment against Strong and others after deducting costs and lawyers fees, the amount of which cannot now be stated by respondent.

Respondent was unable to use the said judgment as an off-set as he contemplated at the time when the same was transferred to him as aforesaid, but concluded to prosecute the same at his own expense should he fail to make the property subject to the judgment.

Respondent has been informed, and believes, and charges, the fact to be, that the said James Rhodes, since he recovered the said judgment against respondent and others, has recovered from James E. Farmer, one of the defendants in said judgment, a sum of money, the amount of which is unknown to respondent; in consideration whereof, the said James Rhodes released the said James E. Farmer from all liability upon the said judgment, and respondent submits the question to this honorable court as matter of law, whether the said Rhodes, by said release, has not also released this respondent from all liability upon said judgment.

Respondent further states that before the will in this cause was filed against him, he assigned the interest verbally which he had in the said judgment of W. & C. Fellows, as James M. Strong and others to William Cothran, Esq., of Carroll County, Mississippi, as a security for the payment of certain claims against respondent, which were held and are still held by the said Cothran as an attorney for collection; and respondent also submits the question to this Honorable Court as matter of law, whether the complainant can now subject the interest of respondent in said judgment against Strong and others to the satisfaction of his judgment.

Respondent further states that he is informed and believes, and charges the fact to be, that the complainant and the said Council R. Wright, one of the defendants in the said judgment of the complainant, have been in business together as merchants and partners, and that their partnership accounts are yet unsettled; and that upon the settlement of those accounts, a balance will be due from the said Rhodes to the said Wright, of a sum sufficient fully to pay off and discharge the said judgment of the said Rhodes; and respon-

dent further states that he is not a principal, but merely a security upon the debt which is the foundation of said judgment, while the said Wright is a principal; and respondent insists that it would be unjust and inequitable to require him to pay a debt for which he is only bound as a security; while the complainant holds in his own hands the means of payment, belonging to one of the principal debtors.

Respondent therefore prays, that that portion of this his answer, which relates to the indebtedness of the said Rhodes to the said Wright, and is embraced in the last preceding paragraph may be made and taken as a cross-bill, and that the said James Rhodes, who is a citizen of the State of Alabama, and the said Council R. Wright, who is a citizen of the State of Mississippi, residing in the Northern District thereof, may be made parties defendant thereto, and be compelled to interplead and litigate the question in this suit, relating to the indebtedness of the said Rhodes to the said Wright, and that process of subpœna may issue to bring the said Council R. Wright before the court to answer the allegations of this cross-bill; and that upon a hearing, your Honor may decree that the amount of the indebtedness which may be ascertained to be due from the said Rhodes to the said Wright, or so much thereof as may be requisite for that purpose, shall be credited and applied in extinguishment of the said judgment of said Rhodes; or for such other or further relief as is suited to respondent's case, and as to equity and good conscience may pertain.

And now having sufficiently answered said bill, respondent prays to be hence dismissed with his costs.

WM. F. STEARNS,
Solicitor for Defendant.

To the end, therefore, that the said James Rhodes and Council R. Wright, may, if they can, show why this respondent should not have the relief prayed for in this cross-bill, and may upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct, and perfect answer make to the several interrogatories hereinafter numbered and set forth, that is to say,

1st. Whether the said James Rhodes and the said Council R. Wright were not some short time ago engaged in business together as merchants, and partners?

2d. Whether the partnership accounts between the said Rhodes and Wright do not as yet remain unsettled?

3d. Whether the said Rhodes is not indebted to the said Wright, and if so, in what amount?

Both defendants are required to answer all of said interrogatories.

And also, fourthly, if there were not moneys received by said

Rhodes and promised by him to Mr. W. B. G. Sneed, to be applied to said claim, that were not so applied.

WM. F. STEARNS,
Solicitor for Defendant.

(*Affidavit to Answer of Farmer.*)

THE STATE OF MISSISSIPPI,
Carroll County:

Before me, W. W. Whitehead, Judge of the Probate Court of said county, personally appeared William B. Farmer, the defendant named in the foregoing answer, who made oath in due form of law, that the matters and things stated and set forth in said answer as of his own knowledge are true, and those stated upon the information of others, he believes to be true.

W. B. FARMER.

Sworn to and subscribed before me, this first day of October, 1851.

W. W. WHITEHEAD,
Probate Judge.

THE STATE OF MISSISSIPPI,
Carroll County:

This day personally appeared before me, the undersigned Judge of the Probate Court in and for the county and State aforesaid, W. B. Farmer, who, being duly sworn, states that the above and foregoing answer was drawn up and inclosed to him by W. F. Stearns, of Holly Springs, and that the same did not reach him until the 28th day of September: that he used all due diligence, but was not enabled earlier than this day to examine and be qualified to the same.

W. B. FARMER.

Sworn to and subscribed before me, this 1st day of October, 1851.

W. W. WHITEHEAD,
Probate Judge.

(*Exhibit to answer of Farmer.*)

Exhibit "I" to the answer of defendant Farmer in the words and figures following, to wit:—

THE STATE OF MISSOURI,
Carroll County.

Know all men by these presents, that we, W. B. Farmer and P. H. Brown, are held and firmly bound unto W. and C. Fellows, in

the penal sum of five thousand dollars, for which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly by these presents, sealed with our seals, and dated this 5th of February, 1848.

The condition of this bond is such that, whereas the said W. and C. Fellows have transferred to said Farmer a judgment heretofore rendered in the District Court of the United States for the Northern District of Mississippi, at Pontotoc, the 14th day of June, 1843, in favor of said obligees *vs.* James M. Strong, *et al.* for the sum of three thousand nine hundred and thirty-seven dollars, subject to credits about seven hundred and sixty-three dollars. Now if said obligors shall truly and punctually pay unto W. and C. Fellows, or their assigns, in two equal instalments, due the 27th of January, 1849, and the 27th of January, 1850, three-fourths of the amount which may be secured or realized by said Farmer out of said judgment, bearing interest at six per cent. from date, deducting costs and attorney's fees which may be incurred.

And the said Farmer shall do no act to impair the security of said judgment, then the above obligation to be void, else to be in full effect.

(Signed) W. B. FARMER. [SEAL.]
P. H. BROWN. [SEAL.]

(*Subpœna from Cross-bill of Farmer.*)

On the 13th day of October, 1851, a writ of subpœna issued as prayed for in cross-bill of W. B. Farmer, in the words and figures following, to wit:—

UNITED STATES OF AMERICA,
Northern District of Mississippi, ss:

The President of the United States, to Council R. Wright, greeting: For certain causes offered before us, in our District Court for the Northern District of Mississippi, sitting in chancery, we command you, that laying all other matters aside, and notwithstanding any excuse, you personally appear at our District Court, in and for said district, sitting in chancery, to be held at the town of Pontotoc, on the first Monday of December next, to answer to a bill of complaint exhibited against you by William B. Farmer, which is made a cross-bill in his answer to the bill of complaint exhibited by James Rhodes against William Fellows, Cornelius Fellows, and William B. Farmer, complainant in our said court, and further to do and receive what our said court shall consider in this behalf.

Hereof fail not, as you will answer the contrary at your peril.

Witness the Honorable Samuel J. Gholson, Judge of the District Court of the United States for the Northern District of Mississippi,

at Pontotoc, the first Monday of June, A. D. 1851, and in the 75th year of the Independence of the United States.

Issued the 13th day of October, 1851.

R. W. EDMONDSON, *Clerk.*

Memorandum for Defendant.

The defendant is required to enter his appearance in this cause in the office of the clerk of said court, on or before the first Monday of December next, or the cross-bill may be taken for confessed, and set for hearing ex parte.

R. W. EDMONDSON, *Clerk.*

(*Marshal's Return, &c.*)

Upon which said writ of subpœna the marshal made the following return, to wit:—

F. E. Beall is authorized to execute this writ, and make due return thereof.

Given under my hand and seal, this 21st day of October, 1851.

[SEAL.] WM. McQUISTON,
Marshal Northern District of Mississippi.

Oct. 29, 1851. Executed.

WM. McQUISTON, *Marshal.*
By F. E. BEALL,
Special Deputy.

(*Replication of Complainant to Answer of Farmer.*)

On the 1st day of December, 1851, the complainant filed his replication to the answer of W. B. Farmer, in the words and figures following, to wit:—

United States District Court for the Northern District of Mississippi.

December Term, 1851.
At rules 1, December, 1851.

JAMES RHODES
vs. } Replication.
FELLOWS, FARMER *et al.*

And the said complainant for replication to the answer of the defendant, William B. Farmer, filed in this cause, says that the matters and things stated in said bill are true, and that the matters and things set forth and stated in said answer, so far as the same denies the allegations in the said bill are untrue and insufficient—all which complainant is ready to maintain and prove as the court may direct, &c.

JNO. S. TOPP,
Solicitor for Complainant.

On the 1st day of December, 1851, the clerk was instructed to enter *pro confesso* against W. & C. Fellows in the words and figures following, to wit:—

Order for Pro Confesso.

The clerk will enter a *pro confesso* in the case James Rhodes, complainant *vs.* W. & C. Fellows, and William B. Farmer and others (No. 40) against the defendants W. & C. Fellows, they having failed to answer, plead, or demur to the bill.

JOHN S. TOPP,
Solicitor for Complainant at rule day, Dec. 1, 1851.

Rule by complainant for decree, *pro confesso*, against W. & C. Fellows was made in the words and figures following, to wit:—

JAMES RHODES
vs.
W. & C. FELLOWS *et al.* } At rules, 1st Monday in Dec. 1851.

Rule for decree *pro confesso*, there being no plea, answer, or demurrer filed within the time allowed for that purpose.

On the 7th day of June, 1851, it being a day of the June Term of said court, the defendants, W. & C. Fellows, filed their application to set aside the *pro confesso* taken against them, and for leave to file their answer to complainant's bill, in the words and figures following, to wit:—

(*Application to set aside Pro Confesso Decree against W. & C. Fellows.*)

UNITED STATES OF AMERICA,
Northern District of Mississippi:

District Court at Pontotoc. June Term, 1852.

JAMES RHODES
vs.
W. & C. FELLOWS *et al.* } No. 40. In Chancery.

In this cause, William F. Stearns, Solicitor for the defendants, W. & C. Fellows, makes oath that he was not originally of counsel for said defendants, and was not employed by them as such until a few days before the last term of this court: that as affiant is informed and believes the defendant, C. Fellows, alone had a personal knowledge of the facts relating to the alleged transfer of their judgment against James M. Strong and others, which is the subject of controversy in this suit; that affiant about the middle of December, 1851, wrote to said C. Fellows at Liverpool, England (which was the address given to affiant by the defendant, W. Fellows), communicating an abstract of complainant's bill in this cause, and asking information upon which to prepare an answer thereto. That letter was answered by said C. Fellows by a communication mailed

at Paris, France, on the 22d of March, 1852, which was not received by affiant until the early part of May, 1852, when affiant at once proceeded to prepare an answer to complainant's bill in accordance with the facts stated in said letter, and forwarded said answer and letter to defendant, W. Fellows, at New Orleans, in order to have the said answer authenticated; and said answer was not returned to affiant unauthenticated until the 4th of June, 1852.

Affiant believes from what he considers authentic information, that the said C. Fellows was in Europe when the bill in this cause was filed, and is still there, and he states that since he was employed as counsel by the said W. Fellows, he has been diligent in endeavoring to communicate with said C. Fellows, in order to prepare an answer for said defendants.

The complainant has taken a *pro confesso* against said W. & C. Fellows for want of an answer. And affiants now ask that said *pro confesso* may be set aside, and that their answer may be permitted to be filed at the present term of this court.

WM. F. STEARNS.

Sworn to and subscribed before me this 7th day of June, A. D. 1852.

R. W. EDMONDSON,
Clerk.

On the 7th day of June, 1852, it being a day of the term of the said court, the following proceedings were had, to wit:—

(*Order of Court setting aside Pro Confesso Decree.*)

JAMES RHODES
vs.
W. & C. FELLOWS *et al.* } No. 40. Chancery.

Monday, 7th June, 1852. This day came on to be heard the application of defendants, W. & C. Fellows, to set aside the judgment *pro confesso* rendered in this cause at the last term of this court, and for sufficient cause shown, it is ordered by the court that said *pro confesso* be set aside, and leave granted to said defendants, W. & C. Fellows, to file their answer in this cause at this term of the court upon the payment of all cost up to this term, except the cost incurred in taking the testimony, for which execution may issue.

And thereupon, the said W. & C. Fellows filed their answer to second bill in the words and figures following, to wit:—

(*Answer of W. & C. Fellows.*)

To the Honorable Samuel J. Gholson, Presiding Judge of the District Court of the United States for the Northern District of Mississippi at Pontotoc:—

The joint answer of William Fellows and Cornelius Fellows, late partners under the firm, name, and style of W. & C. Fellows, to a bill of complaint exhibited against them and others by James Rhodes, on the chancery side of said court.

These respondents, saving and reserving the benefit of all exceptions to the said bill of complaint for its manifold errors, informalities, and uncertainties for answer thereto, or to so much and such parts thereof as they are advised it is material for them to answer unto, say: That they are informed, and believe and admit the fact to be, that the complainant recovered two judgments on the law side of this court against the defendant, William B. Farmer at the time and for the sums mentioned in the said bill, and that executions issued upon said judgments, have been placed in the hands of the Marshal of the Northern District of Mississippi, and have been by him returned *nulla bona*. Respondents do not know, and have no information upon which to form a belief whether or not it is true, as alleged in said bill, that the said Farmer has no property in the State of Mississippi out of which the amount of said judgments can be made, and they require strict proof of the truth of that allegation if their interests are to be in anywise affected thereby.

Respondents also admit, that in a proceeding between themselves and Mary A. S. Strong, wife of James M. Strong, for the trial of the right of property lately pending on the law side of this court, they recovered a judgment against the said James M. and Mary A. S. Strong, for the property mentioned in said bill, or its alternative value as assessed by the jury at the time mentioned in the said bill.

Touching the allegations that these respondents have made an absolute transfer to the said William B. Farmer, of their judgment against the said James M. Strong and others, as partners in the late banking firm of McEwen, King & Co., upon which said judgment the proceedings were had for the trial of the right of property as aforesaid, and that the said judgment is now the property of the said Farmer; these respondents beg leave to submit to the court the following narrative of facts.

Some years ago, respondent, Cornelius Fellows, met the said Farmer in Memphis, Tennessee, and the said Farmer there represented that the said James M. Strong held a large claim against him which was then in suit, and that he believed he might be able to secure the amount of respondent's judgment against said Strong and others, if he could obtain control thereof by using the same as an off-set against the said claim of said Strong. It was thereupon agreed with said Farmer, that the said judgment against said Strong and others should be assigned to him, so as to enable him to use it as an off-set, and that he should execute to respondents a bond, with security, conditioned to pay three-fourths of the amount of said judgment, deducting costs and lawyer's fees, in case he should be able to use the judgment as contemplated; but, at the same time, it

was well understood that the said assignment and bond should be void, in case the said Farmer should be unable to use the said judgment as an off-set. The real intention of respondent, C. Fellows, and said Farmer, in making said arrangement, was not to *sell* said judgment to said Farmer absolutely, but to give him an interest therein of one-fourth in the event of his being able to use the same as contemplated, and in that event he agreed to pay to respondents three-fourths of the whole amount with the deduction aforesaid *immediately;* and the said bond was to be given in order to secure respondents against any bad faith on the part of said Farmer in failing to comply with said agreement. It was necessary, however, in order that said Farmer might be able to use said judgment as he desired, that he should be clothed with the *apparent* legal title thereto, and an absolute assignment was therefore provided for; but, as between respondents and said Farmer, it was never contemplated that he should thereby become the absolute owner of more than one-fourth part of said judgment in any event or contingency, or that respondents should part with their real interest in three-fourths of the amount of said judgment.

The said agreement having been thus made as aforesaid, respondent, C. Fellows, instructed his attorney, Charles P. Sheppard, Esq., of Carrollton, Mississippi, to draw up the necessary transfer and bond in order that the said agreement might be carried into effect according to the intention of the parties, as above set forth, and the same was done by him, as your respondents have been informed and believe; but whether the same was properly done, so as to secure effectually the rights of respondents in the premises, they have not been advised and do not know. The said bond, which is now in the hands of said Sheppard, will be filed herewith as soon as the same can be procured; and it is prayed that the same, when filed, may be taken as a part of this answer, to be marked Exhibit No. 1.

The said Farmer, however, wholly failed in his attempt to use the said judgment as a set-off against the claim of said Strong; and thereupon, as respondents supposed, the said assignment and bond, according to one of the provisions of their said agreement with said Farmer, became null and void, and the legal title to the whole of said judgment, *ipso facto*, reverted in respondents; and respondents submit it to the court, as a question of law, whether or not, upon the facts above stated, their said supposition was correct.

Respondents would further state, that after it had been ascertained that said Farmer could not use said judgment as an off-set, it was believed that said Strong had made a fraudulent assignment of property which was subject to the lien of said judgment, and was then held and claimed by his wife, Mary A. S. Strong; and respondent, C. Fellows, made a new agreement with said Farmer, whereby it was stipulated that said Farmer should cause said property to be levied on under an execution to be issued upon said judgment, and

endeavor to subject said property to the satisfaction of said judgment; and as compensation for his services, in the event of his success, he was to be entitled to one-fourth part of said judgment; but, as it was supposed that it might facilitate the management of the suit if the said Farmer had the apparent control of said judgment, it was agreed that the said assignment should stand as it then was, and that the said bond of said Farmer should stand as a security for the good faith of said Farmer in carrying out the said agreement according to its terms; but respondent, C. Fellows, did not design by the said arrangement to part with any portion of the interest of respondents in three-fourths of the amount of said judgment; on the contrary, his intention was to give said Farmer an interest of one-fourth part in the said judgment in order to incite him to diligence in the effort to subject the property of said Strong as contemplated, because respondents on account of the distance of their residence from North Mississippi, could not attend to the suit themselves; to clothe said Farmer with the legal title to said judgment, in order that he might manage the suit as their agent and trustee with the greater facility, the said Farmer, however, holding the legal title to three-fourths of the amount of said judgment as a trustee for your respondents; and to hold the said bond of said Farmer as an indemnity against any malconduct of his as trustee of respondents.

Respondents are advised by counsel, and therefore insist, that upon the state of facts above presented, the said Farmer is not in equity the owner of more than one-fourth part of the amount now due upon the said judgment, and that no more than such fourth part thereof can justly be subjected to the claims of the complainant against said Farmer, as against the elder and paramount equitable claims of your respondents to the remaining three-fourths of said judgments, growing of their last mentioned agreement with said Farmer; and respondents submit it to the court as matter of law, whether they are not entitled to the benefit of the principle here insisted on as against the complainant.

Respondents are advised by counsel, that in equity the complainant is entitled only to the benefit of so much of said judgment as actually belong in equity, as between respondents and said Farmer, to said Farmer; and that the complainant can assert no right to said judgment in this suit as against respondents, which might not have been asserted against them by said Farmer himself, and they claim the full benefit of that principle.

If the said bond of said Farmer is regarded by the court as being still in force, and if the same, as it now stands, is to be construed in equity as evidencing an absolute assignment of said judgment to said Farmer, leaving respondent no interest therein, and compelling them to look to said bond for their remedy in the premises, such construction as respondents insist, results in consequence of a mistake committed by said Sheppard in reducing to writing the agree-

ment between respondent C. Fellows and said Farmer; and the said bond ought, therefore, to be reformed; and respondents pray that the same may be so reformed if deemed essential to the ends of justice, as to express truly and perfectly the real intention of respondents and said Farmer, by the insertion of a provision that in no event should the interest of said Farmer in said judgment be more than one-fourth part thereof.

And now having fully and sufficiently answered the said bill, respondents pray to be hence dismissed, &c.

WM. F. STEARNS,
Solicitor for Respondents.

(*Affidavit to Answer of W. and C. Fellows.*)

UNITED STATES OF AMERICA,
State of Louisiana, City and Parish of New Orleans:

Before me, John Claiborne, a Commissioner of the United States, duly appointed and sworn by the Circuit Court of the United States, for the Fifth Circuit and Eastern District of Louisiana, personally appeared William Fellows, one of the defendants named in the foregoing answer, who is well known to me, and made oath in due form of law, that the matters and things stated and set forth in said answer, are true to the best of his knowledge, remembrance, information, and belief, and that the reason why said answer is not also sworn to by his co-defendant, Cornelius Fellows, is that said Cornelius Fellows is not now within the United States, but is in Europe.

WM. FELLOWS.

Sworn to and subscribed before me, this 24th day of May, A. D. 1852.

JOHN CLAIBORNE, [SEAL.]
U. S. Commissioner.

And the complainant filed his replication to the answer of said W. and C. Fellows, in the words and figures following, to wit:—

(*Replication to Answer of W. and C. Fellows.*)

THE UNITED STATES OF AMERICA,
In the District Court of the United States for the Northern District of Mississippi, at the June Term, 1852.

JAMES RHODES
vs.
W. and C. FELLOWS et al. } No. 40. Replication.

And the said complainant, for replication to the answer of the defendants W. and C. Fellows, filed in this cause at the present term of this *cause*, says: That the matters and things stated in his

said bill are certain, true, and sufficient in law; and that the matters and things set forth and stated in said answer, so far as they the same, denies the allegations in the said bill—are untrue, uncertain, and insufficient: all which the complainant is ready to verify, maintain, and prove as the Court may direct.

JOHN S. TOPP,
GOODWIN & SALE,
Solicitors for Complainant.

(*Agreement between Counsel.*)

An agreement entered into between the Counsel in this cause, in the words and figures following, to wit:—

JAMES RHODES vs. W. and C. FELLOWS et al. } No. 40. On the Equity side of the District Court of the United States for the N. D. of Mississippi at Pontotoc.

It is hereby agreed by and between the counsel for the parties respectively in the above stated cause, that the counsel of the defendants, W. and C. Fellows and William B. Farmer, shall be permitted to receive the amount of their fees for the recovery of the judgment enjoined in this cause out of the money now in the hands of the Marshal, collected by him upon said judgment; and that one-fourth part of the balance left in the Marshal's hands, after deducting the amount of fees as aforesaid, may be received by the counsel for the complainant; and that if the balance then remaining in the hands of the Marshal shall be more than sufficient for the payment of the two judgments of the complainant *vs.* William B. Farmer et al., and the cost of this suit, the surplus may be received by the counsel for the defendants W. and C. Fellows; and that the residue of the money in the Marshal's hands shall be loaned to W. H. Duke, whose note shall belong to the successful party in this suit.

It is also agreed that the written statements of Charles P. Sheppard and William Cothran, and the affidavits of James M. Strong and A. T. Weissinger, now on file in this cause, shall be regarded as the regularly taken depositions of said witnesses in this cause, subject to all exceptions save those relating to form alone.

JOHN S. TOPP,
GOODWIN & SALE,
WM. F. STEARNS,
BARTON & CHALMERS,
for Fellows, &c.

June 7, 1852.

Receipt of Complainant.

June 9, 1852. Received of Messrs. Barton & Stearns one thousand and fifty-two $\frac{52}{100}$ dollars, being the one-fourth part of the balance left in the Marshal's hands in the case of W. and C. Fellows

vs. Strong and wife, after deducting $700 for fees, as provided for in the within agreement.

JOHN S. TOPP,
Attorney for James Rhodes.

(*Receipt of Defendants, W. and C. Fellows.*)

We acknowledge that we have received from the Marshal seven hundred dollars for our fees, as provided for in the within agreement; and the further sum of one thousand and twelve $\frac{84}{100}$ dollars, being the balance left in the Marshal's hands after deducting twenty-one hundred and forty-five $\frac{75}{100}$ dollars, the balance due on the judgments of James Rhodes *vs.* William B. Farmer and others, June 9, 1852.

WM. F. STEARNS,
Solicitor for W. and C. Fellows.

(*Receipt of Counsel for Money.*)

We acknowledge that we have received from the Marshal twenty-one hundred and forty-five $\frac{73}{100}$ dollars, being the amount agreed by us to be loaned to William H. Duke in the within agreement.

WM. F. STEARNS,
Solicitor for W. and C. Fellows, and Wm. B. Farmer.

JOHN S. TOPP,
June 9, 1852. *Solicitor for James Rhodes.*

(*Order of Court under Agreement of Counsel.*)

And afterwards, to wit, at a subsequent day of said term of said court, the following proceedings were had, to wit:—

JAMES RHODES
vs.
W. and C. FELLOWS et al. } No. 40. Chancery.

Tuesday, 8th June, 1852. It is ordered by the Court that the Marshal be directed to pay over the money in his hands collected by him in the case of W. and C. Fellows against James M. Strong and wife, to the counsel of W. and C. Fellows, William B. Farmer, and James Rhodes, in accordance with the terms of the agreement of said counsel of the 7th of June, 1852, filed in the chancery suit of James Rhodes against W. and C. Fellows et al. now pending in this court.

THE TESTIMONY TAKEN AND SUBMITTED IN THIS CAUSE.

(*Interrogatories to Strong and Weissinger.*)

The direct interrogatories by complainant, and cross-interrogatories by the defendants, propounded to the witnesses James M. Strong and Alexander J. Weissinger, is in the words and figures following, to wit:—

United States District Court for the Northern District of Mississippi:

JAMES RHODES, Complainant, vs. W. and C. FELLOWS and WM. B. FARMER, Defts. } In Chancery, at Pontotoc, Mississippi.

Interrogatories to be propounded to James M. Strong and Alexander J. Weissinger, witnesses in behalf of complainant in the above entitled suit in said District Court on the Chancery docket.

Interrogatory 1st: Are you acquainted with the parties to this suit?

Interrogatory 2d: If you was present and heard a conversation between the defendants, W. and C. Fellows, or either of them, and Wm. B. Farmer, in relation to the sale of a judgment, which W. and C. Fellows had before that time recovered in the said U. S. District Court, against M'Ewen, King, & Co., to the said Wm. B. Farmer, will you please state the whole of the conversation, and especially whether or not one of the Messrs. Fellows agreed to look to Wm. B. Farmer and his security, P. H. Brown, for certain payments to be made in consideration of an absolute transfer of said judgment, to the said Wm. B. Farmer; and state whether Wm. B. Farmer was to control and manage the said judgment at law against M'Ewen, King, & Co., or did Messrs. W. and C. Fellows claim the right, or disclaim their right and authority to interfere and control the same.

Interrogatory 3d: Please state anything you may know further concerning the matters of controversy between the parties to this suit, that you may consider material for either of them.

JNO. S. TOPP,
for Complainant.

Cross Interrogatories: 1st. If you state that you heard any such conversation as is above inquired of, you will be pleased to state, also, when and where it took place, between what individuals, and the name of every other person, if any, who was present at the time; and precisely what the parties said.

2d. Did you understand, at the time of such conversation, whether any written agreement then existed between Farmer and the Messrs. Fellows, or whether their agreement was afterwards to be reduced to writing?

3d. Did you ever hear any conversation between Farmer and either of the Messrs. Fellows, in relation to the judgment of W. and C. Fellows, against yourself and others, after your negroes were levied on by the Marshal? If so, when and where?

WM. F. STEARNS,
Solicitor for W. and C. Fellows.

I consent, that the deposition of James M. Strong may be taken, without a commission, upon the foregoing interrogatories and cross-interrogatories, before any justice of the peace of Carroll County.

WM. F. STEARNS,
Solicitor for W. and C. Fellows.

The answers of James M. Strong, and A. J. Weissinger, to the foregoing interrogatories, are in the words and figures following, to wit:—

(*Deposition of James M. Strong and Weissinger.*)

Ans. to interrogatory 1st: I am well acquainted with Wm. B. Farmer and Cornelius Fellows; but partially acquainted with W. Fellows.

A. 2d. I was in Carrollton some time in the year 1849, or 1850, previous to the decision of suit, on the trial of the right of property, and Wm. B. Farmer and C. Fellows were both in town. I approached Fellows upon the subject of a compromise of the suit or debt he had held against me, and he told me that I was too late, that he had proposed a compromise with me long before that time, but that he had traded the judgment to Wm. B. Farmer, and had no control over it whatever, and advised me to see Farmer upon the subject. I went immediately to Farmer, and got him and Fellows together, and told them that I was anxious to make some arrangement with them in order that I might get the other parties to the suit to contribute to the payment of the same. Fellows again repeated, in Farmer's presence, that Farmer could do as he pleased, that it was then his own matter, and that he could dispose of it as he pleased; that he Fellows, had gotten out of it, and that he would look to him, Farmer, and his securities for his money. Farmer did not deny anything Fellows had stated, but would tell Fellows that he, Fellows, had him bound to pay him, and wanted to know if he would take such bills as I had offered in the settlement of the debts, and release him and his securities. Fellows declined, repeating that he did not ever again intend to touch it.

A. 3d. In the month of January last, I travelled from this County down the Yazoo River with Wm. B. Farmer, to Vicksburg, and he voluntarily stated to me, that if I could pay him a part of the debt, he was still willing to give me one and two years upon the balance of the debt, provided any arrangement could be made with Rhodes, who had enjoined the case. We separated at Vicksburg, and I went

to New Orleans, and sought the acquaintance of W. Fellows, and asked him if it was possible for him to render me any sort of accommodation in the case; and told him that I could amply secure him to his satisfaction. He stated, that it was a matter that he knew but little about; that his brother, C. Fellows, had always managed it, and that he could not do anything about it; asked me about Farmer and the securities, as to their ability to pay, &c.; and stated that he would write to Mr. Stearns, the attorney, at Holly Springs, and see what could be done in the case. I have not heard from him since.

To the 1st cross-interrogatory: I will state my answer to the 2d interrogatory answers the cross-interrogatory, except as to others present; part of the conversation was in the house of a Mr. Nance, in Carrollton; but all was principally between myself, Farmer, & C. Fellows; do not recollect any other persons being present.

2d. It was my understanding that all the contract between them in relation to the matter, had been previously entered into in writing.

3d. The conversation alluded to in answer to 2d interrogatory, was after the levy made by General Raburn upon my negroes, which will answer this cross-interrogatory.

JAMES M. STRONG.

Answer to interrogatory 1st: I am acquainted with the Messrs. Fellows, and also with William B. Farmer; I am not acquainted with Mr. Rhodes.

A. 2d. I never heard a conversation between the parties; but early in the year 1850 (I think), at the request of J. M. Strong, I called at the office of the Messrs. Fellows, in New Orleans, to see them in relation to a judgment they had transferred to Wm. B. Farmer, against him and others. My object in calling on the said Fellows was, if possible, to effect some arrangement with them favorable to J. M. Strong. Cornelius Fellows informed me that he deeply regretted Strong's situation, but that it was impossible for him to assist him. He (Fellows) having transferred the judgment to Wm. B. Farmer, and the whole thing had thereby passed from his control. He stated to me that Farmer and his securities were alone responsible to him in the matters; that Farmer had been required to give him security, and he (Fellows) held them responsible to him; he also stated that he would write Farmer an advisory letter on the subject, and appeal to him to make any terms of arrangements he might make with Strong as favorable to him as possible; but that Farmer was under the obligation to regard his advice, and would doubtless consult his own judgment and feelings in the case.

A. 3d. I think of nothing further, material to either of the parties.

Answer to 1st, 2d, and 3d cross-interrogatories: I have stated in

answer to 2d interrogatory, that I conversed with Mr. Fellows in New Orleans on the subject; our conversation was private (I think no one was present); I never heard the parties conversing together on the subject; I did understand from Fellows and Farmer, both, that there had been a written transfer previous to my visit to New Orleans in 1850; I knew that a levy had been made on Strong's negroes by the Marshal, on account of the Fellows judgment previous to my conversation with Fellows in 1850.

A. J. WEISSINGER.

(*Certificate to Deposition of Strong and Weissinger.*)

STATE OF MISSISSIPPI,
Carroll County:

I, William H. Curtis, an acting Justice of the Peace in and for said county, do certify the foregoing to be the answers of James M. Strong and A. J. Weissinger, each written in their own handwriting, and to which they each signed their names, after first being by me duly sworn to depose in their answers to interrogatories and cross-interrogatories, the truth, the whole truth, and nothing but the truth.

Given under my hand and seal this 18th day of May, A. D. 1852.

W. H. CURTIS, J. P. [SEAL.]

An interrogatory propounded to W. Cothran, a witness for complainant, and his answer to the same, are in the words and figures following, to wit:—

(*Interrogatory to W. Cothran.*)

THE UNITED STATES OF AMERICA,
United States District Court for the Northern Disirict of Mississippi, to June Term, A. D. 1852:

JAMES RHODES
vs.
WILLIAM B. FARMER and
W. and C. FELLOWS. } In Chancery.

Interrogatory to William Cothran, a witness in behalf of complainant in the above entitled case, now pending in said District Court on the chancery side of the docket.

Are you acquainted with the parties to this suit, and if you do not know them all, state which of them you may be acquainted with? Did the defendant, Wm. B. Farmer, at any time, and when, show to you a transfer from his co-defendants, to him of a certain judgment which they had recovered against M'Ewen, King, & Co., in the said United States District Court, and upon which judgment and execution had issued and been levied on several negroes as the

property of James M. Strong, of Carroll County, Mississippi, who had been found liable as a member of the said firm of M'Ewen, King, & Co., and the property claimed by Mary A. Strong, wife of James M. Strong? If you shall answer in the affirmative, then please state whether you had a debt or debts on said Farmer, which he proposed to secure by the transfer of said judgment before the trial of the right of property claimed by Mary A. Strong, and whether he did transfer his interest, or any part of it, either before the trial, or in June, 1851, after the trial had taken place. Will you please state the amount of your debts, with interest, to 15th June, 1851, and whether the said Farmer did actually transfer to you any part of said judgment, and when and for what amount has he paid, since then, any part of the debt he proposed to secure?

(*Deposition of Cothran.*)

Answer.—I am acquainted with Wm. B. Farmer, Cornelius Fellows, and have seen James Rhodes; I am not acquainted with William Fellows; my recollection is, that some time in the spring of 1848, Wm. B. Farmer showed me a transfer or what purported to be a transfer from W. and C. Fellows, to him of a judgment which they had recovered in the District Court of the United States for the Northern District of Mississippi, against James M. Strong and others, as members of the Banking Company of M'Ewen, King, & Co. To the best of my recollection, no execution issued on said judgment had at that time been levied on negroes as the property of James M. Strong. But an execution was subsequently issued on said judgment, and as I have been informed by Wm. B. Farmer, was levied on several negroes as the property of James M. Strong, and the property was claimed by Mary A. Strong, wife of the said James M., as I was informed by said Wm. B. Farmer. Cothran & George, of which firm I am a member, held two claims against Wm. B. Farmer; one in favor of Deblee and Richardson of New York, for five hundred and twenty-one $\frac{73}{100}$ dollars, or about that sum, including interest to 12th June, 1851; the other in favor of Townsend & Brothers, for the sum of eight hundred and seventy $\frac{58}{100}$ dollars, including interest to 12th June, 1851. Defendant, Wm. B. Farmer, some time in the spring of 1851, precise time not recollected, proposed to transfer his interest in said judgment to secure the payment of the above-named claims. I declined to take said transfer at that time, but stated to him that I would take the transfer of his interest in said judgment if the property was made liable to its payment on the trial of the right of property which was then pending. Subsequently, about the 15th of June, 1851, the defendant, Wm. B. Farmer, came to me and informed me he had just received a letter from his attorney, Mr. Stearns, of Holly Springs. That the property of Strong had been subjected to the payment of the judgment which had been transferred by W. and

C. Fellows to him; and again proposed to transfer his interest in said judgment to secure the payment of the claims above named; I at that time agreed to take the transfer from said Farmer of his interest in said judgment; I was at the time engaged, and did not take a written transfer, but agreed to do so; before Mr. Farmer came to town again, the proceeds of said judgment was enjoined by complainant, as he, Farmer, informed me, and no written transfer was made. But he, Farmer, offered to transfer, which offer was verbally accepted by me as attorney, holder of the claims before named to secure their payment.

Wm. B. Farmer has since, about the 1st of March, 1852, paid four hundred and twenty dollars of the said debt, or about that sum. The balance, about nine hundred and seventy-one $\frac{54}{100}$ dollars, with interest, since June 12, 1851, is still unpaid. The amount which was transferred, or intended to be transferred, was the amount of the two claims before named, which at that time was about the sum of thirteen hundred and ninety-two $\frac{31}{100}$ dollars, four hundred and twenty of which has since been paid as before stated.

W. COTHRAN.

The testimony introduced by the defendants is in the words and figures following, to wit:—

(*Deposition of C. P. Sheppard for defendants.*)

The deposition of Charles P. Sheppard. Statement made by C. P. Sheppard.

Some time about the last of January, or 1st of February, 1848, I received a letter from Cornelius Fellows, dated at Memphis, Tennessee, 27th January, 1848, authorizing me to make an arrangement with W. B. Farmer in reference to a judgment obtained by said Fellows and others against James M. Strong and others, in the District Court of the United States for the Northern District of Mississippi.

I attach to this statement the original letter marked (A), which fully discloses the object of the writer; but I will further add, that a postscript was attached to the other sheet of this letter, which has been mislaid or destroyed, in substance stating (that I should make no arrangement which could in any way jeopardize their judgment); soon after this W. B. Farmer called on me at Carrollton, and I exhibited to him this letter. I made the arrangement with him on the 5th of February, 1848, acting under the instructions above referred to. I then transferred the judgment to Farmer (and the object and intention of this transfer was to enable Farmer to collect and secure this judgment for the benefit of the plaintiffs therein). But as it was then proposed by Farmer that he could secure the judgment by means of a debt, which he then stated he was owing to Strong, I took from Farmer a bond that would secure the payment of that portion of the judgment that would be due to Fellows

and others; a true copy of which bond I caused to be inclosed to Mr. Stearns, the attorney in this cause; this bond was taken on the supposition that the judgment should be secured by means of the debt due by Farmer to Strong, not consenting that the judgment should be secured in that way unless such security was given by Farmer. It subsequently appeared that nothing could be obtained from this source; and, by subsequent litigation, this debt, due by Farmer to Strong, was cancelled.

W. B. Farmer had, for some time, neglected to take any steps to collect this judgment; and Cornelius Fellows came to Carrollton, and sent for Farmer to have some further understanding on the subject. It was then understood by both parties that Strong disclaimed having any interest in the property in his possession, and that there would be a contest as to the title, and the trial of an issue might become necessary. C. Fellows not residing in this State, desired to procure Farmer to take the prosecution of the claim, look up the proof that would be required on the issue in the trial of the right of property, and for his trouble was willing to allow him the same proportion of the judgment which was to have been allowed to him on the arrangement first made. W. B. Farmer consented to this course, and the arrangement was made in my presence. Farmer was to have the execution issued, have it levied on the negroes, and make the necessary investigation as to proof. It was fully understood that Farmer's actual interest in the judgment was only one-fourth of what should be collected after deducting expenses and attorneys' fees: no other arrangement was made between them. I was also advised by Fellows, that Strong had applied to him to make some arrangement pending the trial of the issue, but he had refused to do so, and referred him to Farmer and informed him that he had full control of the judgment; that he had pursued this course because he did not wish to be annoyed on the subject, and being fully satisfied as to the result of the issue.

The foregoing statement is in substance the extent of my knowledge on the point submitted.

CHAS. P. SHEPPARD.

May 18, 1852.

(*Exhibit to deposition of Sheppard.*)

"EXHIBIT A."

Memphis, January 27th, 1848.

C. P. SHEPPARD, ESQ.
Carrollton, Miss.

DEAR SIR: We have in the Federal Court at Pontotoc, Miss., a judgment against Jas. M. Strong, Esq., of your county, and others, as stockholders in the McEwen, King, & Co. Bank of Holly Springs, Miss.: the balance due on this judgment, I think, is about $4,000.

Mr. W. B. Farmer, a planter in your county, is here to see me, and make some arrangement about this debt; one of his friends owes Strong thirty to thirty-five hundred dollars, which is about due. Farmer wanted to purchase this debt of ours against Strong conditionally; after much talk, I have made the following agreement with him: I agree to give him or his friend the control of our judgment against Strong, on their executing to you a bond with unquestionable security, such as will be entirely satisfactory to you, to pay us in one and two years from date, with interest from date, three-fourths of the amount secured by them. W. B. Farmer to have one-fourth of what may be realized after deducting all costs and expenses and your fee; Farmer and his friend are to charge nothing for their services. To enable you to carry out this arrangement, we give you full authority to act for us in the matter as you may think best for our interest. In making this arrangement they are to guarantee us against any injury to our judgment, which we deem ultimately good as it now stands. I wish such security as you think will be not only responsible, but punctual. Should anything more be required, you will please address me (C. Fellows) at this place, where I expect to be for several months yet.

Your friends,

W. & C. FELLOWS.

I trust you will give this matter your best and prompt attention.

C. F.

(*Consent of Counsel to take answer of Farmer as a deposition for W. and C. Fellows.*)

An agreement between counsel to take the deposition of Wm. B. Farmer for defendants, is in the words and figures following, to wit:—

JAMES RHODES
vs.
W. AND C. FELLOWS et al.

The counsel for the parties in this cause agree that the defendants, W. and C. Fellows, may take the deposition of the defendant, William B. Farmer, subject, however, to all legal exceptions.

STEARNS,
for Defendants.

GOODWIN & SALE, and
J. S. TOPP,
Solicitors for Complainant.

June 9, 1852.

(*Deposition of Wm. B. Farmer.*)

The answer of W. B. Farmer introduced and read as a deposition

for defendants, W. and C. Fellows, under the foregoing agreement between counsel, is in the words and figures following, to wit:—

To the Honorable Samuel J. Gholson, Judge of the District Court of the United States for the Northern District of the State of Mississippi, at Pontotoc.

The separate answer of William B. Farmer, to a bill of complaint exhibited against him and others in said court, on the chancery side thereof, by James Rhodes.

This respondent, saving and reserving the benefit of all exceptions to the said bill for its manifold errors, informalities, and uncertainties, for answer thereto, or to so much and such parts thereof as he is advised it is material for him to answer unto, saith:—

That he admits it to be true that, at the June Term, 1850, of said court, the complainant recovered a judgment, on the law side of said court, against William G. B. Sneed, Council R. Wright, James E. Farmer, and this respondent, for the sum of $1,308 $\frac{62}{100}$, and that an execution issued upon said judgment, and came to the hands of the Marshal of the Northern District of Mississippi, and was by him returned "no property found," and that none of the defendants named aforesaid have any property within the jurisdiction of said court, upon which a levy could be made to satisfy said judgment. He also admits the existence of the second judgment charged by complainant, and that an execution thereon has been returned "nulla bona."

Respondent further admits, that at the June Term, 1851, of said court, an issue was tried between Mary A. S. Strong, claimant of 15 negro slaves as the property of James M. Strong, levied on by virtue of an execution issued from said court in favor of W. and C. Fellows against the said James M. Strong and others, and the said W. and C. Fellows, plaintiffs in the execution, and that the said issue was decided in favor of the said plaintiff in the execution, whereby the said slaves were found and adjudged to be subject to the satisfaction of the said execution. The judgment upon which the said execution was issued was rendered on the 4th day of June, 1843, for the sum of $3,937 $\frac{75}{100}$, and is entitled to some credits, the precise amount of which is unknown to respondent, but supposed to be about $763. The value of said slaves, however, that were recovered in the said trial of the right of property, exceeds the amount now due upon the said judgment.

Respondent denies that the said judgment in favor of W. & C. Fellows *vs.* James M. Strong and others was ever sold to him by the said W. & C. Fellows, and states the fact to be that on or about the 5th day of February, 1848, he owed, or was sued for a large debt which he supposed to belong to the said James M. Strong; and respondent, wishing to procure a set-off to said claim against him, applied to the said W. & C. Fellows to obtain the control of said judgment, offering to pay them three-fourths of the amount that he might be able to collect upon the same; which offer was

accepted by them. And the said judgment was accordingly transferred to him, not as a sale thereof, but to enable respondent to use the same as a set-off; and respondent in order to secure the said W. & C. Fellows their three-fourths of the amount of said judgment in the event that he should be able to use the same as contemplated, executed to them a penal bond, a copy whereof is herewith filed marked Exhibit 1, and prayed to be taken as a part of this answer, the original not being in the custody, or under the control of this respondent.

Respondent states, therefore, that under his contract with the said W. & C. Fellows, he is entitled to fourth part of the money that may be collected upon said judgment against Strong and others, after deducting costs and lawyers' fees, the amount of which cannot now be stated by respondent.

Respondent was unable to use the said judgment as an off-set, as he contemplated at the time when the same was transferred to him as aforesaid, but concluded to prosecute the same at his own expense, should he fail to make the property subject to the judgment.

Respondent has been informed and believes and charges the fact to be, that the said James Rhodes, since he recovered the said judgment against respondent and others, has received from James E. Farmer, one of the defendants in said judgment, a sum of money, the amount of which is unknown to respondent, in consideration whereof the said James Rhodes released said James E. Farmer from all liability upon the said judgment; and respondent submits the question to this honorable court as matter of law whether the said Rhodes by said release has not also released this respondent from all liability upon said judgment.

Respondent further states, that before the bill in this cause was filed against him, he assigned the interest verbally which he had in the said judgment of W. & C. Fellows *vs.* James M. Strong and others to William Cothran, Esq., of Carroll County, Mississippi, as a security for the payment of certain claims against respondent which were held, and are still held by the said Cothran as an attorney for collection; and respondent also submits the question to this honorable court as matter of law, whether the complainant can now subject the interest of respondent in said judgment against Strong and others to the satisfaction of his judgment.

Respondent further states that he is informed and believes and charges the fact to be, that the complainant and the said Council R. Wright, one of the defendants in the said judgment of the complainant, have been in business together as merchants and partners, and that their partnership accounts are as yet unsettled, and that upon the settlement of those accounts, a balance will be due from the said Rhodes to the said Wright of a sum sufficient fully to pay off and discharge the said judgment of the said Rhodes; and re-

spondent further states that he is not a principal, but merely a security upon the debt which is the foundation of said judgment, while the said Wright is a principal; and respondent insists that it would be unjust and inequitable to require him to pay a debt for which he is only bound as a security, while the complainant holds in his own hands the means of payment belonging to one of the principal debtors.

Respondent therefore prays that that portion of this his answer which relates to the indebtedness of the said Rhodes to the said Wright, and is embraced in the last preceding paragraph, may be made and taken as a cross-bill, and that the said James Rhodes, who is a citizen of the State of Alabama, and the said Council R. Wright, who is a citizen of the State of Mississippi, residing in the Northern District thereof, may be made parties dependent thereto, and be compelled to interplead and litigate the questions in this suit, relating to the indebtedness of the said Rhodes to the said Wright, and that process of subpœna may issue to bring the said Council R. Wright before the court to answer the allegations of this cross-bill; and that upon a hearing your honor may decree that the amount of the indebtedness which may be ascertained to be due from the said Rhodes to the said Wright, or so much thereof as may be requisite for that purpose, shall be credited and applied in extinguishment of the said judgment of said Rhodes, or for such other or further relief as is suited to respondent's case, and as to equity and good conscience may pertain.

And now having sufficiently answered said bill, respondent prays to be hence dismissed with his costs.

WM. F. STEARNS,
Solicitor for Defendant.

To the end, therefore, that the said James Rhodes and Council R. Wright, may, if they can, show why this respondent should not have the relief prayed for in this cross-bill; and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to the several interrogatories hereinafter numbered and set forth, that is to say:—

1st. Whether the said James Rhodes and the said Council R. Wright were not, some short time ago, engaged in business together as merchants and partners?

2d. Whether the partnership accounts between the said Rhodes and Wright, do not as yet remain unsettled?

3d. Whether the said Rhodes is not indebted to the said Wright, and, if so, in what amount?

Both defendants are required to answer all of said interrogatories; and also, fourthly, if there were not moneys received by said

Rhodes, and promised by him to Mr. W. B. G. Sneed, to be applied to said claims that were not so applied.

WM. F. STEARNS,
Solicitor for Defendant.

(*Affidavit to Deposition of Farmer.*)

THE STATE OF MISSISSIPPI.
Carroll County:

Before me, W. W. Whitehead, Judge of the Probate Court of said County, personally appeared William B. Farmer, the defendant named in the foregoing answer, who made oath in due form of law that the matters and things stated and set forth in said answer as of his own knowledge are true, and those stated upon the information of others he believes to be true.

W. B. FARMER.

Sworn to and subscribed before me this 1st day of October, 1851.
W. W. WHITEHEAD,
Probate Judge.

(*Affidavit to Deposition of Farmer.*)

THE STATE OF MISSISSIPPI,
Carroll County:

This day personally appeared before me, the undersigned, Judge of the Probate Court in and for the County and State aforesaid, W. B. Farmer, who, being duly sworn, states that the above and foregoing answer was drawn up and inclosed to him by W. F. Stearns, of Holly Springs, and that the same did not reach him until the 28th day of September; that he used all due diligence, but was not enabled earlier than this day to examine and be qualified to the same.

W. B. FARMER.

Sworn to and subscribed before me, this 1st day of October, 1851.
W. W. WHITEHEAD,
Probate Judge.

(*Exhibit to Deposition of Farmer.*)

"Exhibit 1."

THE STATE OF MISSISSIPPI,
Carroll County:

Know all men by these presents, that we, W. B. Farmer and P. H. Brown, are held and firmly bound unto W. and C. Fellows, in the penal sum of five thousand dollars, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and ad-

ministrators, &c. jointly by these presents. Sealed with our seals, and dated this 5th of February, 1848.

The condition of this bond is such, that whereas the said W. and C. Fellows have transferred to said Farmer a judgment heretofore rendered in the District Court of the United States for the Northern District of Mississippi, at Pontotoc, the 14th day of June, 1843, in favor of said obligees *vs.* James M. Strong *et al.*, for the sum of three thousand nine hundred and thirty-seven dollars, subject to credits about seven hundred and sixty-three dollars. Now, if said obligors shall truly and punctually pay unto W. and C. Fellows, or their assigns, in two equal instalments, due 27th of January, 1849, and 27th of January, 1850, three-fourths of the amount which may be secured or realized by said Farmer out of said judgment, bearing interest at six per cent. from date, deducting costs and attorneys' fees, which may be incurred.

And the said Farmer shall do no act to impair the security of said judgment; then, the above obligation to be void; else, to be in full effect.

(Signed) W. B. FARMER, [SEAL.]
P. H. BROWN, [SEAL.]

The Clerk was directed to set this cause for hearing in the words and figures following, to wit:—

(*Order to set Cause for Hearing.*)

Chancery Rules, December 6, 1852.

JAMES RHODES, *Complainant*,
vs.
WM. FARMER, FELLOWS, JOHNSON, & Co., *et al.* } O. Bill.

Set this cause for hearing upon bill, answer, and proofs.

TOPP, GOODWIN, & SALE.

To ROBERT W. EDMONDSON, *Clerk.*

Upon the final hearing of this cause, the complainant excepted to the competency of portions of the deposition of C. P. Sheppard, and of W. B. Farmer, in the words and figures following, to wit:—

(*Exceptions to Competency of Testimony.*)

JAMES RHODES
vs.
W. and C. FELLOWS.

When this cause came on to be heard finally, at the present term of this court, the complainant objected to the competency of that part of the deposition of C. P. Sheppard, taken by the defendants in this cause, which read as follows, viz: "And the object and intention of this transfer was to enable Farmer to collect and secure

this judgment for the benefit of the plaintiffs therein." Also to all of said deposition to the end thereof, commencing where it reads as follows, viz.: "W. B. Farmer had, for some time, neglected to take any steps to collect the judgment, &c." But said objections were overruled by the court, and the whole of said deposition allowed to be read; and when defendants, W. and C. Fellows, offered to read the answer of defendant, Farmer, as his deposition, complainant objected to the competency as a deposition of all those parts of said answer which explain the intention with which the transfer of the judgment *vs.* James M. Strong, in the pleading mentioned, was made by W. and C. Fellows to said Farmer; but the court overruled said objection and permitted the whole answer to be read as a deposition.

On the 13th day of December, 1852, it being a day of the December Term of said Court, a final decree was pronounced in this cause, in the words and figures following, to wit:—

(*Final Decree.*)

JAMES RHODES
vs. } 40.
W. and C. FELLOWS.

Monday, 13th December, 1852. This day came on this cause for final hearing, upon bill, answers, exhibits, and proofs, and was argued by counsel; and it appearing to the satisfaction of the Court from the written admission of Mr. Topp, Solicitor for the complainant, on file in this cause, that the complainant, since the filing of his bill in this cause, has recovered one-fourth part of the amount of the judgment of W. and C. Fellows *vs.* James M. Strong, and Mary A. Strong, his wife, which is enjoined in this cause, and that the complainant is entitled to no further relief in the premises, it is therefore ordered, adjudged, and decreed by the Court, that the injunction in this cause be dissolved; that the complainant's bill be dismissed; and that the complainant pay all the costs of this suit, which have not been heretofore ordered to be paid by other parties to this suit. December 13th, 1852.

S. J. GHOLSON.

And afterwards, to wit, on the said 13th day of December, 1852, the following proceedings were had, to wit:—

(*Order for Appeal.*)

JAMES RHODES
vs.
W. and C. FELLOWS *et al.*

Monday 13th December, 1852. In this cause the complainant prayed an appeal to the Supreme Court, which is allowed.

On the 21st day of December, 1852, the complainant filed an

appeal bond in this cause, to the Supreme Court of the U. States, in the words and figures following, to wit:—

(*Appeal Bond.*)

JAMES RHODES
vs.
WM. B. FARMER, and
W. and C. FELLOWS.
} In Chancery.

Know all men by these presents, that we, James Rhodes of Sumter County, in the State of Alabama, and John S. Topp, of Lowndes County, in the State of Mississippi, are held and firmly bound unto William B. Farmer, of Carroll County, and State of Mississippi; William Fellows and Cornelius Fellows, of the city of Louisville and State of Kentucky, in the sum of five hundred dollars, which payment well and truly to be made unto the said William B. Farmer, William Fellows and Cornelius Fellows, their executors, administrators, heirs, or assigns, we bind ourselves, and each of us jointly, severally, and firmly by these presents, as also our heirs, executors and administrators. Sealed with our seals, and dated this 18th day of December, A. D. 1852.

The condition of the above obligation is such that, whereas, the said James Rhodes filed his original bill of complaint on the chancery side of the docket, in the District Court of the United States, for the Northern District of Mississippi, and whereas the said cause was submitted to his Honor the Honorable Samuel J. Gholson, Judge of said District Court, presiding in Chancery at the December Term of said court, began and held on the first Monday of December, 1852, and continued from day to day, until the 13th day of said month, on which last-mentioned day his Honor determined said cause, and pronounced his decree in favor of the said defendants, from which decree the said James Rhodes prayed an appeal to the Supreme Court of the United States, to be holden in the city of Washington, on the

Now, if the said James Rhodes shall prosecute his appeal with effect, or in case he shall fail therein, and shall well and truly pay all costs and damages, the said William B. Farmer, William Fellows, and Cornelius Fellows shall sustain, by reason of the said appeal to the Supreme Court of the United States, then this obligation shall be void, otherwise the same shall remain in full force and virtue.

JAMES RHODES, [SEAL.]

By his Attorney JNO. S. TOPP.

JNO. S. TOPP, [SEAL.]

I approve of the foregoing bond and security.

Given under my hand, this the 20th day of December, A. D. 1852.

S. J. GHOLSON,
Judge U. S. D. C. for Miss.

Filed December 21st, 1852.

R. W. EDMONDSON,
Clerk.

THE UNITED STATES OF AMERICA *ss:*
Northern District of Mississippi.

I, Robert W. Edmondson, Clerk of the District Court of the United States for the Northern District of Mississippi, do hereby certify that the foregoing sixty-eight pages contain a full, true, and perfect transcript of the original papers and proceedings filed and had in the cause therein stated, as fully and completely as the remains of record and on file in my office; and also of the appeal-bond filed by the complainant in this cause to the Supreme Court of the United States.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said Court at office in Pontotoc, this the 28th day of June, A. D. 1853.

R. W. EDMONDSON,
Clerk.